

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JONATHAN CARROLL MARVIN,  
Petitioner,

No. C 13-4877 SBA (PR)

**ORDER OF DISMISSAL**

v.

GARY SWARTHOUT, Warden,  
Respondent.

This action was opened in error when the Court received a habeas petition form from Petitioner that was intended to be filed in a previously-filed action -- Case No. C 13-2440 SBA (PR).

Petitioner had filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in Case No. C 13-2440 SBA (PR). However, on September 16, 2013, the Court issued an Order granting Petitioner's request for a stay of proceedings while he returned to state court to exhaust his administrative remedies. On October 22, 2013, Petitioner informed the Court that his state proceedings had concluded; however, he did not attach to that notice his amended petition, which included the newly-exhausted claims. Instead, Petitioner filed his amended petition on a separate habeas petition form along with an in forma pauperis application and other documents. He did not indicate that they were to be filed in Case No. C 13-2440 SBA (PR). Therefore, as mentioned above, a new action was opened.

Petitioner currently has two separate habeas actions pending, although he meant to file only one action. Accordingly, the Clerk is directed to remove Petitioner's habeas petition form from this action along with his in forma pauperis application and all other documents filed by Petitioner. The Clerk is then directed to file them in his previously-filed action, Case No. C 13-2440 SBA (PR).

1 The Clerk shall label his petition from this action as his "Amended Petition" in Case No. C 13-2440  
2 SBA (PR). The Clerk is further directed to mark his "Amended Petition," in forma pauperis  
3 application and all other documents as filed on the dates they were received by the Court. The Court  
4 will review his "Amended Petition," in forma pauperis application, and any other pending motions in  
5 a separate written Order in Case No. C 13-2440 SBA (PR).

6 The present action is DISMISSED because it was opened in error. No filing fee is due. The  
7 Clerk shall close the file.

8 IT IS SO ORDERED.

9 DATED: 12/16/13

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

United States District Court  
For the Northern District of California